The Appellants 1 and 3/ Accused Nos. 2 and 5 in Crl.A.No.1868/03, Viz., Ravi and V. Padmanabhan were directed to be released on bail as per the order of this Court dated 30.4.2004 and made in Crl.M.P.No.5033/04

The 2nd Appellant /Accused No.4 in Crl.A.No.1868/03 Viz., G. Mohan was directed to be released on bail as per the order of this Court dated 16.4.2004 and made in Crl.M.P.No.4257 of 2004

The Appellants 1 and 2 / Accused Nos. 6 and 7 in Crl.A.No.1754/03 Viz., R. Mugunthan and R. Ayyappan were directed to be released on bail as per the order of this Court dated 19.1.2004 and made in Crl.M.P.No.12599 of 2003.

The 3rd Appellant / Accused No.8 in Crl.A.No.1754/03 Viz., L. Nagajaj, was directed to be released on bail as per the order of this Court dated 15.12.2003 and made in Crl.M.P.No.11569 of 2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-08-2006

CORAM:

THE HONOURABLE MR.JUSTICE M.KARPAGA VINAYAGAM
AND
THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL Nos. 1754 & 1868 of 2003

1. R.Mugunthan
2. R.Ayyappan
3. L.Nagaraj ..Appellants/ in Crl.A.No.1754/2003 (Accused Nos. 6 to 8)

1. Ravi
2. G.Mohan
3. V.Padmanabhan .. Appellants/ A2,A4 and A5 in Crl.A.No.1868/2003

-vs-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

State by the Inspector of Police
Deevattipatti Police Station
Salem District
(Crime No.84 of 1997) .. Respondent
in both appeals.

Both appeals have been filed u/s. 374 of Cr.P.C against the Judgment made in S.C.No.59/2003 dated 11.11.2003 on the file of the Additional District Sessions Judge-cum-Fast Track Court No.1, Salem.

For appellants : : Mr.R.Shanmugasundaram,
(C.A.No.1754/2003) Senior Counsel for
Mr.P.Vajravel- Appellants 1 and 2
Mr.A.C.Manibharathi- 3rd Appellant

For appellants
(C.A.No.1868/2003): : Mr.R.Theogaraj 3rd Appellant
Mr.R.Nelliyappan-Appellants 1 and 2

For respondents : : Mr.V.R.Balasubramanian-G.A.
.

COMMON JUDGMENT

(Judgment of the Court was delivered by
A.C.ARUMUGAPERUMAL ADITYAN,J

These appeals have been filed against the Judgment in S.C.No.59 of 2003 on the file of Additional Sessions Judge-cum-Fast Track Court No.1, Salem. There are totally eight accused involved in the crime. Out of them, against A1, the case has been spilt up as S.C.No.19 of 2002 since he is absconding . As against A3, the charge has already been abated since he died subsequent to the filing of the charge sheet. Crl.A.No.1754 of 2003 has been preferred by A6 to A8 and Crl.A.No.1868/2003 has been preferred by A2, A4 and A5.

2. The facts of the case in brief relevant for the purpose of deciding these appeals are as follows:

The accused and the deceased Rengasamy belong to Naidu Community and there was previous enmity between Naidu Community and Adi Dravida Community in the Pommiyampatti Village. According to the prosecution, on 29.3.1997, the deceased gave electricity for the function conducted by the Adi Dravida Community belonging to "Bharatiya Kudiyarasu Katchi". After coming to know about this, the accused got infuriated against the deceased for having allowed the Adi Dravida Community people to take electricity power from his shop A1 along with the other accused, came to the shop of the deceased on the night of 29.3.1997 at about 10.00p.m., and scolded

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

him. On 30.3.1997, at about 11.00 a.m,., all the accused armed with casuarina stick, trespassed into grocery shop of the deceased and at the instigation of A1, A3 , A6 to A8 caught hold of the deceased and A2 Ravi beat the deceased with casuarina stick on the left side of his head. A4 Mathan beat the deceased with casuarina stick on the right side of the head and A5 Padmanabhan, assaulted the deceased with casuarina stick on the right side of the face near the eye of the deceased, thus, causing grievous injuries. P.Ws 1 and 2 along with one Govindasamy took the injured Rengasamy to the Omalur Government Hospital on 30.3.1997 at about 12.20p.m., who was treated by P.W.7, the Doctor and issued Ex.P!4 copy of accident register. P.W.7 has referred the injured to Salem Government Hospital for further treatment , taking into consideration the gravity of the injuries sustained by him. P.W.8, the Doctor who had examined the injured Rengasamy at Salem Government Hospital and issued Ex P15 copy of the accident register. Thereafter, the injured was taken to a private hospital by name "Shanmuga Private Hospital" wherein P.W.9 the Doctor admitted at about 6.15p.m., and treated him but without responding the treatment Rengasamy breathed his last on 31.3.1997 at 4.00p.m., On 30.3.1997 at 8.30p.m., itself , P.W.1 has preferred a complaint from Salem Government Hospital with P.W.13 who had registered a case in Crime No.184 of 1997 under Section 147,148,452,341 and 307 IPC. Ex P29 is the First Information report. Thereupon, P.W.13 visited the place of occurrence prepared observation mahazar had drawn rough sketch Ex P30 at 10.00p.m., on the same day, and also collected material objects from the place of occurrence and went to the hospital at 11.30p.m., and examined P.W.1 and recovered blood stained clothes of the deceased. P.W.13 has examined the witnesses and recorded their statement. After the death of Rengasamy on 31.3.1997 at 4.00 p.m., P.W.13 altered the charge into that under Sections 147, 148, 452, 341 and 302 IPC. Ex P31 is the Express First Information report. P.W.13 has conducted inquest on 31.3.1997 between 7.00 a.m., and 10.oo a.m., on the corpse of Rengasamy and send the body for post mortem . Ex P32 is the inquest report. P.W.11 is the Doctor who had conducted post mortem on the corpse of Rengaswamy on 31.3.1997 at about 12.40p.m and issued Ex P28 post mortem report wherein he has opined that the deceased would appear to have died of head injuries. A2 , A3, A4 ,A5 and A7 have surrendered before the learned Judicial Magistrate No.II Salem on 2.4.1997. After taking them into police custody on 10.4.1997, at 5.00p.m.,, P.W.13 has recorded the confession statement of A2, A3, A4 , A5 and A7 and recovered casuarina stick from A2, A4 and A5 and blood stained shirts from A3 and A7. After observing all the formalities, P.W.13 completed the investigation and filed charge sheet on 15.8.1997. The case was taken on file as PRC 29 of 1997 by the District Munsif-cum-Judicial Magistrate, Omalur and on appearance of the accused furnished copies under Section 207 Cr.P.c and since the case is triable by Court of Sessions, the learned Judicial Magistrate had committed the case to the Principal Sessions Court,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Salem who in turn had transferred the case to Fast Track Court No.1, Salem for trial. The charges under Section 147, 148,452, 341 and 302 I.P.C were framed against the accused by the learned Additional Sessions Judge(Fast Track Court NO.1) Salem against the accused and when questioned the accused pleaded not guilty.

3. P.Ws 1 to 13 were examined. Exs. P1 to P.32 and M.O.1 to M.O.12 were marked.

4. When the incriminating circumstances were put to the accused, they totally denied their complicity with the crime. On the basis of oral and documentary evidence, the learned Additional Sessions Judge-cum- Fast Track Court No.1, Salem has convicted A2, A4 to A8 under Sections 148,449 and 302 IPC r/w 149 I.P.C and sentenced under Section 148 IPC to pay a fine of Rs.500/- each in default 50 days rigorous imprisonment and under Section 449 IPC to under go ten months rigorous imprisonment each and a fine of Rs 500/- in default 50 days rigorous imprisonment and under Section 302 r/w 149 IPC to undergo life imprisonment . Aggrieved by the findings of the learned Additional Sessions Judge-cum-Fast Track Court, No.1, Salem, A6 to A8 have preferred Crl.A.No.1754 of 2003 and A2, A4 and A5 have preferred Crl.A.No.1868 of 2003.

5. Now the point for consideration in these appeals is Whether the conviction and sentence imposed by the learned Additional Sessions Judge-cum- Fast Track Judge, No.1, Salem in S.C.No.59 of 2003 against A2 , A4 to A8 are to be set aside for the reasons stated in the memorandum of appeals.

6.We have heard Mr.R.Shanmuga Sundararm, the learned Senior counsel for A6,A7,A8, Mr.R.Thiagaraj, the learned counsel for A5 and Mr.R.Nelliappan, the learned counsel for A2 and A4 and Mr.V.R.Balsubramanian , the learned Government Advocate for the respondent. We have carefully considered their submissions

7. The point:
The eye witnesses to the crime are P.W1. to P.W. 3. P.W.3 has not identified A8. P.W.3 has deposed to the fact that A2, A4 ,A5 , A6 and A7 armed with casuarina stick assaulted Rengasamy causing grievous injuries and left him in a pool of blood. P.Ws 1 and 2 would depose to the fact that at time of the occurrence, A4 had assaulted Rengasamy on the right side of the head with casuarina stick and A2 had assaulted Rengaswamy on the left side of the head with casuarina stick and A5 had assaulted the said Rengasamy with casuarina stick on the right eye. Both A1 and A2 have not implicated A6 and A7 in the assault as narrated by P.W.3. No overt acts has been attributed to A6 to A8 by P.W1 to P.W.3. Ex P1 complaint was preferred by P.W.1. The overt act attributed against A6, A7 and A8 is that they caught hold of the deceased at the time of occurrence to facilitate the other accused viz., A2, A4 and A5

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

to assault him with casuarina stick. But as against A6, A7and A8, P.W1 to P.W.3 in their evidence have not deposed before the Court that they caught hold of the deceased facilitating A2, A4 and A5 to beat with casuarina stick. Immediately, after the occurrence, the deceased was taken to Omalur Governmnet Hospital. Ex P14 is the copy of the accident register issued by P.W7., the Doctor after examining the injured Rengasamy on 30.3.1997 at 12.20p.m., Even in Ex P14 , it has been mentioned that the injured was assaulted by three known persons with logs on 30.3.1997 at 11.30 a.m. Ex P15 is the accident register issued by P.W.8, the Doctor who had treated the injured Rengasamy at Government Hospital, Salem on 30.3.1997 on 1.15 p.m., ExP16 is the death intimation issued by P.W.9 a private Doctor working at Shanmuga Private Hospital, Salem. According to P.W.9, the injured Rengasamy died on 31.3.1997 at 4.00a.m., and thereafter Ex P16 death intimation was given to the police. There is no delay in registering the First Information Report. According to P.W.1, the occurrence had taken place on 30.3.1997 at about 11.00 a.m., ExP1 complaint was preferred on 30,.3.1997 at 7.00p.m., by P.W.1 to P.W.13 at Shanumuga Private Hospital, Salem and a case has been registered under Crime No.184/1997 under Section 307 I.P.C. and after the receipt of Ex P16 death intimation, the charge has been altered to 302 IPC. The occurrence had taken place at Pommiyampatti, the injured Rengasamy was taken to Omalur Government Hospital from where he was referred to Government Hospital, Salem and later he was admitted in a private Hospital by name Shanmuga Private Hospital, salem. Since the injured was taken to Omalur Government Hospital and from there to Government Hospital, Salem and then to a private Hospital at Salem, FIR was registered at 7.00 p.m., . So the delay is only due to the injured being taken to three hospitals one after another soon after the occurrence. The evidence of P.Ws 1 and 2 are corroborated by the evidence of Doctors P.W.7 to P.W9. In Ex P14, three injuries were mentioned to Rengasamy. One at the right side of the head measuring 10 x 1 x ½ cm., another on the left side of the head measuring 8 x 1 x ½ cm and another contusion measuring 4 x 3 c.m on the right upper eye lid. The Doctor who had conducted post mortem was examined as P.W.11 who had issued Ex P28 post mortem certificate. The doctor has opined that the deceased would have died due to multiple fractures in the skull. So the evidence of P.W1 and P.W.2 was also corroborated with the medical evidence of P.W.11 in respect of the injuries sustained by the deceased on the head due to the assault by A2, A4 and A5. The contention of the learned counsel appearing for the fifth respondent is that P.W.1 would not have witnessed the occurrence because the occurrence said to have occurred on a holiday will have no bearing at all because there is no rebuttal evidence let in on the side of the fifth respondent to show that P.W1 's shop was closed on the date of occurrence and P.W.1 was not present at the place of occurrence. The prosecution has proved the guilt against A2,A4 and A5 beyond any reasonable doubt and hence A2, A4, and A5 are liable to be convicted under Section 302 r/w 34

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

IPC instead of 302 r/w 149 IPC. The prosecution has not proved the guilt against A6 to A8 beyond any reasonable doubt and hence A6 to A8 are liable to be acquitted. The point is answered accordingly.

8. In the result, Crl A.No.1754 of 2003 is allowed and the conviction and sentence imposed against A6 to A8 are set aside and they are acquitted of all the charges. The bail bonds stand cancelled. Crl.A.No.1868 of 2003 is dismissed and A2, A4 and A5 are convicted for the offence punishable under Section 302 IPC r/w 34 I.PC instead of 302 IPC r/w 149 I.P.C. to undergo life imprisonment each. In other respects, the Judgement in S.C.No.59 of 2003 is confirmed. The trial Court is directed to secure the presence of A2, A4 and A5 to under go remaining portion of the sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To

1. The Additional Sessions Judge-cum-Fast Track Court No.1,Salem
2. Do thro The District and Sessions Judge, Salem
3. The Judicial Magistrate No.1, Salem(A2, A4 and A5)
4. Do Thro The Chief Judicial Magistrate, Salem
5. The Inspector of Police, Deevattipatti Police Station, Salem (cr.No.184/97)
6. The Superintendent of Central Prison, Coimbatore.
7. The Inspector of Police, Asthampatti Police Station,(A6 and A7)
8. The District Munsif-cum-Judicial Magistrate, Omalur(A8)
8.a. Do Thro the Chief Judicial Magistrate, Salem
9. The Public Prosecutor, High Court, Madras-104
10 The District Collector, Salem
11. The Director General of Police, Mylapore, Madras

1 cc to Mr.P.Vajravel, Advocate, Sr. 35427
2 ccs to Mr.P Theogaraj, Advocate, Sr. 35131

Crl.A.Nos.1754&1868/2003

JRG (CO)
kk 29/8

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/